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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,285	09/08/2004	Lisa Price		5284

46237 7590 03/27/2007  
LISA PRICE  
1709 SW 5TH STREET  
FORT LAUDERDALE, FL 33312

EXAMINER
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CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/711,285

Applicant(s)

PRICE, LISA

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-8-04</u> | 6) <input type="checkbox"/> Other: ____  |

Applicant presents four claims with only broad concepts being claimed; for example, the way of holding the straw in the strawholding arm, the mechanism to lock the release arm against the inner rim of the lid, the spring supplying the power to secure and turn the mechanism. The structural elements of the straw delivery mechanism should be discussed in the claims. For example:

A drinking straw automatic delivery device attached to a top end closure of a beverage can comprising: a straw and a straw delivery mechanism;

the straw delivery mechanism including a straw support, a release mechanism, a connecting rivet and a spring;

the straw support including an elongated arm, the elongated arm having generally planar top and bottom surfaces, two side edges, a free end and an opposite end connected to the release mechanism and the spring, a serrated opening for a straw located in close proximity to the free end, the serrated edge of the straw opening extending above the planar top surface and allows only upward movement of the straw within the straw opening;

the release mechanism including an elongated release arm having generally planar top and bottom surfaces, two side edges, a free end and an opposite end connected to the straw support and spring;

the straw support and the release mechanism being rotated with respect to the top end closure of a beverage can about the connecting rivet which secures the straw delivery mechanism to the top end closure, the straw delivery mechanism having a locked position wherein the straw is not aligned with the frangible area of the top end closure and the free end of the release arm

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engages an inner rim of the top end closure preventing spring-biased, rotating movement of the release arm and straw support;

the free end of the release arm is released from engagement with the inner rim by contact with a frangible, downwardly bent tongue portion of the top end closure upon opening of the top end closure frangible area by downward bending motion, the free end of the release arm moves along the beverage can sidewall as spring-biased, rotating motion moves the straw delivery mechanism from the locked position to an unlocked, straw delivery position wherein the straw and the straw opening are positioned in alignment with the opening in the top end closure that was previously covered by the frangible area of the top end closure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 4 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claim 3 recites "the mechanism to lock the release arm ..." wherein claim 1 refers to an opening mechanism (pull tab 14) that is different than the release arm 9. This causes an antecedence problem with claim 3 which makes claim 3 indefinite.

Claim 4 states that the spring supplies power to secure and turn the mechanism named in claim 1. Applicant has meant to state that the spring secures and turns the device for delivery of a drinking straw rather than the opening mechanism (pull tab 14) of claim 1. This causes an antecedence problem with claim 4 which makes claim 4 indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Prieto (6491184).

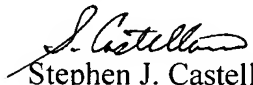
Prieto discloses a device for automatic delivery of a drinking straw (see Fig. 3a-3d) from the inside of a metal beverage container having an opening mechanism with a bend-down-tongue (7). Re claim 2, the straw (2) is held in straw holding arm (4). Re claim 3, the release arm (secondary locking arm 8) is locked against the inner rim of the lid (intermediate piece 9) at the articulated hinge end (14) which is connected to intermediate piece 9. Re claim 4, the spring is the elasticity of straw holding arm 4 which biases the arm 4 toward its free position A shown in Fig. 3d and as recited in col. 6, lines 30-31.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3781

sjc